

to any other officer or petty officer of the Coast Guard or other designees authorized by the Commandant.

(c) The provisions in this subchapter do not limit the powers conferred upon Coast Guard commissioned, warrant, or petty officers by any other law or regulation, including but not limited to 33 CFR parts 6, 160, and 165.

§ 101.405 Maritime Security (MARSEC) Directives.

(a)(1) When the Coast Guard determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against the maritime elements of the national transportation system, the Coast Guard may issue a MARSEC Directive setting forth mandatory measures. Only the Commandant or his/her delegatee may issue MARSEC Directives under this section. Prior to issuing a MARSEC Directive, the Commandant or his/her delegatee will consult with those Federal agencies having an interest in the subject matter of that MARSEC Directive. All MARSEC Directives issued under this section shall be marked as sensitive security information (SSI) in accordance with 49 CFR part 1520.

(2) When a MARSEC Directive is issued, the Coast Guard will immediately publish a notice in the FEDERAL REGISTER, and affected owners and operators will need to go to their local COTP or cognizant District Commander to acquire a copy of the MARSEC Directive. COTPs and District Commanders will require owners or operators to prove that they are a person required by 49 CFR 1520.5(a) to restrict disclosure of and access to sensitive security information, and that under 49 CFR 1520.5(b), they have a need to know sensitive security information.

(b) Each owner or operator of a vessel or facility to whom a MARSEC Directive applies is required to comply with the relevant instructions contained in a MARSEC Directive issued under this section within the time prescribed by that MARSEC Directive.

(c) Each owner or operator of a vessel or facility required to have a security plan under parts 104, 105 or 106 of this

subchapter that receives a MARSEC Directive must:

(1) Within the time prescribed in the MARSEC Directive, acknowledge receipt of the MARSEC Directive to their local COTP or, if a facility regulated under part 106 of this subchapter, to their cognizant District Commander; and

(2) Within the time prescribed in the MARSEC Directive, specify the method by which the measures in the MARSEC Directive have been implemented (or will be implemented, if the MARSEC Directive is not yet effective).

(d) In the event that the owner or operator of a vessel or facility required to have a security plan under part 104, 105, or 106 of this subchapter is unable to implement the measures in the MARSEC Directive, the owner or operator must submit proposed equivalent security measures and the basis for submitting the equivalent security measures to the COTP or, if a facility regulated under part 106 of this subchapter, to their cognizant District Commander, for approval.

(e) The owner or operator must submit the proposed equivalent security measures within the time prescribed in the MARSEC Directive. The owner or operator must implement any equivalent security measures approved by the COTP, or, if a facility regulated under part 106 of this subchapter, by their cognizant District Commander.

[USCG-2003-14792, 68 FR 39278, July 1, 2003, as amended at 68 FR 60472, Oct. 22, 2003]

§ 101.410 Control and Compliance Measures.

(a) The COTP may exercise authority pursuant to 33 CFR parts 6, 160 and 165, as appropriate, to rectify non-compliance with this subchapter. COTPs or their designees are the officers duly authorized to exercise control and compliance measures under SOLAS Chapter XI-2, Regulation 9, and the ISPS Code (Incorporated by reference, see § 101.115).

(b) Control and compliance measures for vessels not in compliance with this subchapter may include, but are not limited to, one or more of the following:

- (1) Inspection of the vessel;
- (2) Delay of the vessel;

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- (3) Detention of the vessel;
- (4) Restriction of vessel operations;
- (5) Denial of port entry;
- (6) Expulsion from port;
- (7) Lesser administrative and corrective measures; or

(8) Suspension or revocation of a security plan approved by the U.S., thereby making that vessel ineligible to operate in, on, or under waters subject to the jurisdiction of the U.S. in accordance with 46 U.S.C. 70103(c)(5).

(c) Control and compliance measures for facilities not in compliance with this subchapter may include, but are not limited to, one or more of the following:

- (1) Restrictions on facility access;
- (2) Conditions on facility operations;
- (3) Suspension of facility operations;
- (4) Lesser administrative and corrective measures; or

(5) Suspension or revocation of security plan approval, thereby making that facility ineligible to operate in, on, under or adjacent to waters subject to the jurisdiction of the U.S. in accordance with 46 U.S.C. 70103(c)(5).

(d) Control and compliance measures under this section may be imposed on a vessel when it has called on a facility or at a port that does not maintain adequate security measures to ensure that the level of security to be achieved by this subchapter has not been compromised.

[USCG-2003-14792, 68 FR 39278, July 1, 2003, as amended at 68 FR 60472, Oct. 22, 2003]

§ 101.415 Penalties.

(a) *Civil and criminal penalty.* Violation of any order or other requirement imposed under section 101.405 of this part is punishable by the civil and criminal penalties prescribed in 33 U.S.C. 1232 or 50 U.S.C. 192, as appropriate.

(b) *Civil penalty.* As provided in 46 U.S.C. 70119, any person who does not comply with any other applicable requirement under this subchapter, including a Maritime Security Directive, shall be liable to the U.S. for a civil penalty of not more than \$ 25,000 for each violation. Enforcement and ad-

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ministration of this provision will be in accordance with 33 CFR 1.07.

[USCG-2003-14792, 68 FR 39278, July 1, 2003, as amended by USCG-2008-0179, 73 FR 35009, June 19, 2008]

§ 101.420 Right to appeal.

(a) Any person directly affected by a decision or action taken by a COTP under this subchapter, may appeal that action or decision to the cognizant District Commander according to the procedures in 46 CFR 1.03-15.

(b) Any person directly affected by a decision or action taken by a District Commander, whether made under this subchapter generally or pursuant to paragraph (a) of this section, with the exception of those decisions made under §101.410 of this subpart, may appeal that decision or action to the Commandant (CG-54), according to the procedures in 46 CFR 1.03-15. Appeals of District Commander decisions or actions made under §101.410 of this subpart should be made to the Commandant (CG-543), according to the procedures in 46 CFR 1.03-15.

(c) Any person directly affected by a decision or action taken by the Commanding Officer, Marine Safety Center, under this subchapter, may appeal that action or decision to the Commandant (CG-54) according to the procedures in 46 CFR 1.03-15.

(d) Decisions made by Commandant (CG-54), whether made under this subchapter generally or pursuant to the appeal provisions of this section, are considered final agency action.

[USCG-2003-14792, 68 FR 39278, July 1, 2003, as amended at 68 FR 60472, Oct. 22, 2003; 68 FR 62502, Nov. 4, 2003; USCG-2008-0179, 73 FR 35009, June 19, 2008]

Subpart E—Other Provisions

§ 101.500 Procedures for authorizing a Recognized Security Organization (RSO). [Reserved]

§ 101.505 Declaration of Security (DoS).

(a) The purpose of a DoS, as described in SOLAS Chapter XI-2, Regulation 10, and the ISPS Code (Incorporated by reference, see §101.115), is to state the agreement reached between a vessel and a facility, or between vessels in the